

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

September 10, 2010

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Re: *Rick Cornwell d/b/a Cornwell Drywall v. Delta Acquisitions Group, LLC and Edward Nathan Page*
C.A. No. S09A-11-002

Date Submitted: September 1, 2010

Date Decided: September 10, 2010

On Appeal from the Court of Common Pleas:

AFFIRMED

Dear Counsel:

Pending before the Court is an appeal from a decision rendered by the Court of Common Pleas that denied Appellants' claims for breach of contract and quantum meruit against Appellee Edward Nathan Page. For the reasons set forth herein, the decision of the Court of Common Pleas is affirmed.

FACTUAL BACKGROUND

Delta Acquisitions Group, LLC ("Delta") is or was a Delaware limited liability company that was formed primarily for the construction of new residential homes. At all times relevant hereto, Delta consisted of three members, including Willie Page, who had a twenty-four percent interest in Delta.

Delta was the developer for a community called Seabrook Village ("Seabrook"). In 2006, Delta, through Willie Page, contracted with Rick Cornwell d/b/a Cornwell Drywall ("Cornwell") to perform drywall work in several of the Seabrook homes. Prior to each job, Cornwell would provide an estimate

for the job and Willie Page would approve the estimate. After the job was completed, Cornwell would submit an invoice to Delta. Taking into account partial payments made by Delta, Cornwell alleged approximately \$44,409.88 remained due to Cornwell when Cornwell stopped working at Seabrook in November of 2006.

As construction of Seabrook continued, Delta ran into financial difficulty. Willie Page asked his son, Edward Page, to assist with restructuring Delta's debts. Edward Page loaned Delta a substantial sum of money and began to negotiate with Delta's vendors.

On February 27, 2007, Cornwell went to Delta's office to inquire about payment on the invoices. At that time, Cornwell spoke with Edward Page who represented to Cornwell that he was going to take over Delta's books, try to straighten out Delta's financial affairs and make sure all of Delta's vendors were paid. Cornwell and Edward Page discussed Delta's refinancing and created a payment schedule ("Payment Schedule"). The Payment Schedule time line was designed to coordinate with Delta's refinancing efforts. Edward Page then forwarded the executed Payment Schedule to Osita Aroku, the person who handled Delta's business affairs. No one from Delta objected to the Payment Schedule.

Pursuant to the Payment Schedule, Delta was required to make the first payment on April 15, 2007, in the amount of \$12,500.00. On April 17, 2007, Cornwell returned to Delta's office to inquire about payment; there, he met with Edward Page. Edward Page informed Cornwell that Delta was unable to make the payment under the Payment Schedule and made a personal check out to one of Cornwell's employees in the amount of \$2,000.00. On May 14, 2007, Cornwell again returned to Delta's office to inquire about payment of the outstanding invoices. Edward Page provided Cornwell with another personal check in the amount of \$1,000.00. The memo line on the check indicated payment was for "Delta Acquisition Debt". Delta was unable to meet its obligations under the Payment

Schedule after the refinancing did not yield the anticipated cash flow.

Cornwell filed a complaint against Delta and Edward Page on August 3, 2007, alleging breach of contract and quantum merit. A default judgment was entered against both defendants. The default judgment entered against Edward Page was set aside, however, and, after a hearing on the complaint in the Court of Common Pleas, judgment was entered in favor of Edward Page. Cornwell appeals that decision.

DISCUSSION

1. *Standard of Review*

This Court sits as an intermediate appellate court when reviewing appeals from the Court of Common Pleas. *Disabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. Ct. 2002). The Court will review questions of law *de novo* and review the lower court's factual findings pursuant to a "clearly erroneous" standard. *J.S.F. Properties, LLC v. McCann*, 2009 WL 1163494, at *1 (Del. Super. Ct.). The Court will "correct errors of law and ... review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process." *State Farm Mut. Auto. Ins. Co. v. Dann*, 794 A.2d 42, 45 (Del. Super. Ct. 2002) (internal quotation marks and citation omitted). "When a trial judge bases findings of fact on the credibility of witnesses, the deference already required by the clearly erroneous standard of appellate review is enhanced." *J.S.F. Properties*, 2009 WL 1163494, at *1 (internal quotation marks and citation omitted).

2. *Merits*

Cornwell asserts the lower court's decision was not supported by substantial evidence and constituted an error of law.

Cornwell alleges the lower court's decision was legally erroneous because trial court ruled the burden was on Cornwell to show Edward Page lacked authority from Delta to enter into the Payment

Schedule and otherwise contract on Delta's behalf. Cornwell argues the case of *Miller v. Melson*, 1990 WL 96394 (Del. Super. Ct.), places the burden on Edward Page to prove the existence of an agency relationship and Cornwell posits that Edward Page failed to do so. Edward Page cites the Restatement (Third) of Agency for the proposition that, when contracting, an agent gives a third-party a warranty of authority. In this case, then, Edward Page asserts that it was Cornwell's burden to demonstrate that Edward Page had violated the warranty of authority in order for Cornwell to recover from Edward Page.

The trial court found that Edward Page demonstrated that he disclosed the fact of an agency relationship and identified the principal as Delta. This demonstration is the only burden *Miller* places on one who seeks to avoid personal liability by asserting agency as a defense. Moreover, the lower court's finding was supported by substantial evidence, as discussed below. Finally, no evidence was presented to suggest Edward Page breached the warranty of authority he gave to Cornwell when contracting with him on behalf of Delta. The lower court's decision is legally sound.

Cornwell also attacks the trial court's decision for not being supported by substantial evidence. Specifically, Cornwell argues the finding that Edward Page was acting as a disclosed and authorized agent on behalf of Delta was not supported by substantial evidence. Cornwell performed work for Delta. He looked to Delta for payment. When Cornwell arrived at Delta's office, he met with Edward Page who told him that he was working on behalf of Delta in an effort to straighten out the company's financial affairs. With that disclosure, Edward Page executed the Payment Schedule. The Payment Schedule explicitly lists Delta as a party to the Payment Schedule. The document does not indicate that Edward Page would make any payments personally. Edward Page sent the Payment Schedule to the person managing Delta's business affairs. No member of Delta objected to the Payment Schedule.

In these worst of economic times, the Court sympathizes with those caught in the real estate

downturn that has caused significant and sometimes crushing losses for those who completed working on projects for others but were not compensated. Nevertheless, I find the lower court did not err in holding Edward Page not personally liable for Delta's obligations. The judgment below is affirmed.

CONCLUSION

For the reasons set forth herein, the decision of the Court of Common Pleas is AFFIRMED.
IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary
pc: Court of Common Pleas